

7T (as it appears in 26 CFR part 1 revised April 1, 1995) (except that the taxable year of change is the first taxable year beginning after December 31, 1991).

(ii) *Manner of changing to the recurring item exception method.* For the first taxable year beginning after December 31, 1991, a taxpayer may change to the recurring item exception method by accounting for the item on its timely filed original return for such taxable year (including extensions). For taxable years ending before April 7, 1995, the automatic consent of the Commissioner is limited to those items accounted for under the recurring item exception method on the timely filed return, unless the taxpayer indicates a wider scope of change by filing the statement provided in Q&A-7(b)(2) of § 1.461-7T (as it appears in 26 CFR part 1 revised April 1, 1995).

(3) *Retroactive change to the recurring item exception method.* For the first taxable year beginning after December 31, 1989, or December 31, 1990, a taxpayer is granted consent of the Commissioner to change to the recurring item exception method of accounting, provided the taxpayer complies with paragraph (d)(2) of this section on either the original return for such year or on an amended return for such year filed on or before October 7, 1991. For this purpose the effective date is the first day of the first taxable year beginning after December 31, 1989, or the first day of the first taxable year beginning after December 31, 1990. A taxpayer is also granted the consent of the Commissioner to expand or modify its use of the recurring item exception method for the first taxable year beginning after December 31, 1989, December 31, 1990, or December 31, 1991.

(e) *Examples.* The following examples illustrate the principles of this section:

Example 1. Requirements for use of the recurring item exception. (i) Y corporation, a calendar year, accrual method taxpayer, manufactures and distributes video cassette recorders. Y timely files its federal income tax return for each taxable year on the extended due date for the return (September 15, of the following taxable year). Y offers to refund the price of a recorder to an purchaser not satisfied with the recorder. During 1992, 100 purchasers request a refund of the \$500 purchase price. Y refunds \$30,000 on or before

September 15, 1993, and the remaining \$20,000 after such date but before the end of 1993.

(ii) Under paragraph (g)(3) of § 1.461-4, economic performance with respect to \$30,000 of the refund liability occurs on September 15, 1993. Assume the refund is deductible (or allowable as an adjustment to gross receipts or cost of goods sold) when incurred. If Y does not adopt the recurring item exception with respect to rebates and refunds, the \$30,000 refund is incurred by Y for the 1993 taxable year. However, if Y has properly adopted the recurring item exception method of accounting under this section, and as of December 31, 1992, all events have occurred that determine the fact of the liability for the \$30,000 refund, Y incurs that amount for the 1992 taxable year. Because economic performance (payment) with respect to the remaining \$20,000 occurs after September 15, 1993 (more than 8½ months after the end of 1992), that amount is not eligible for recurring item treatment under this section. Thus, the \$20,000 amount is not incurred by Y until the 1993 taxable year.

Example 2. Requirements for use of the recurring item exception; amended returns. The facts are the same as in *Example 2*, except that Y files its income tax return for 1992 on March 15, 1993, and Y does not refund the price of any recorder before that date. Under paragraph (b)(1) of this section, the refund liability is not eligible for the recurring item exception because economic performance with respect to the refund does not occur before Y files a return for the taxable year for which the item would have been incurred under the exception. However, since economic performance occurs within 8½ months after 1992, Y may file an amended return claiming the \$30,000 as incurred for its 1992 taxable year (see paragraph (b)(2) of this section).

[T.D. 8408, 57 FR 12427, Apr. 10, 1992, as amended by T.D. 8593, 60 FR 18743, Apr. 13, 1995]

§ 1.461-6 Economic performance when certain liabilities are assigned or are extinguished by the establishment of a fund.

(a) *Qualified assignments of certain personal injury liabilities under section 130.* In the case of a qualified assignment (within the meaning of section 130(c)), economic performance occurs as a taxpayer-assignor makes payments that are excludible from the income of the assignee under section 130(a).

(b) *Section 468B.* Economic performance occurs as a taxpayer makes qualified payments to a designated settlement fund under section 468B, relating to special rules for designated settlement funds.

(c) *Payments to other funds or persons that constitute economic performance.* [Reserved]

(d) *Effective dates.* The rules in paragraph (a) of this section apply to payments after July 18, 1984.

[T.D. 8408, 57 FR 12428, Apr. 10, 1992]

§ 1.463-1T Transitional rule for vested accrued vacation pay (temporary).

(a) *Introduction.* Section 91(i) of the Tax Reform Act of 1984 provides a transitional rule for the election under section 463, relating to accrual of vacation pay. Section 91(i) applies only in the case of taxpayers with respect to which a deduction was allowable (other than under section 463) for vested accrued vacation pay for the last taxable year ending on or before July 18, 1984.

(b) *Election under transitional rule.* A taxpayer described in paragraph (a) of this section that makes an election under section 463 for the first taxable year ending after July 18, 1984, shall compute the opening balance of the account described in section 463(a)(1) ("accrual account") with respect to such vacation pay under the rules provided in paragraph (e)(3) of this section.

(c) *Multiple vacation pay accounts within a single trade or business.* (1) An election under section 463 must be made with respect to all vacation pay accounts maintained by the taxpayer within a single trade or business whether the liability is for vested accrued vacation pay or for vacation pay that is contingent.

(2) If a taxpayer has elected, in a taxable year ending on or before July 18, 1984, to treat contingent vacation pay with respect to a single trade or business under section 463, the taxpayer may elect, under the provisions of section 91(i) of the Tax Reform Act of 1984, to treat vested accrued vacation pay with respect to the same trade or business under section 463. However, no election may be made with respect to vacation pay for which a prior section 463 election was made and that is accounted for under section 463.

(d) *Time for making election.* A taxpayer described in paragraph (a) of this section that makes an election under section 463 for the first taxable year ending after July 18, 1984, must make

the election on or before the due date (determined with regard to extensions) for filing the taxpayer's income tax return for such taxable year. However, if the taxpayer's income tax return was filed for the first taxable year ending after July 18, 1984, prior to March 6, 1986, the taxpayer must make the election by the later of the due date (determined with regard to extensions) for filing the taxpayer's income tax return, or May 5, 1986. In this case, the election must be made by filing an amended return (showing adjustments, if any) for such year and attaching the statement required by paragraph (e) of this section on or before the later of the due date (determined with regard to extensions) for filing the taxpayer's income tax return, or May 5, 1986.

(e) *Manner of making election.* A taxpayer must make the election described in paragraph (b) of this section by attaching a statement to the taxpayer's income tax return for the first taxable year ending after July 18, 1984. The statement must indicate that the taxpayer is electing to apply the provisions of section 463 with respect to vested accrued vacation pay for the taxpayer's first taxable year ending after July 18, 1984. The statement must contain the following information:

(1) The taxpayer's name and a description of the vacation pay plans to which the election applies.

(2) If a taxpayer has more than one trade or business and is not making the election with respect to all trades or businesses, a description of the trades or businesses to which the election applies.

(3) The opening balance in the taxpayer's accrual account. This balance equals the amount determined as if the taxpayer had maintained an account for the last taxable year ending on or before July 18, 1984, representing the taxpayer's liability for vested accrued vacation pay earned by employees before the close of the last taxable year ending on or before July 18, 1984, and payable during that taxable year or within 12 months following the close of that taxable year. If the taxpayer's liability for vacation pay includes both